

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-01073-PAB-STV

WILDEARTH GUARDIANS

Plaintiff,

v.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, a federal agency
within the U.S. DEPARTMENT OF THE INTERIOR, and

U.S. DEPARTMENT OF THE INTERIOR, a federal agency,

Defendants.

SETTLEMENT AGREEMENT

Through this settlement agreement ("Settlement Agreement"), Plaintiff WildEarth Guardians and Defendants United States Office of Surface Mining Reclamation and Enforcement and U.S. Department of the Interior (collectively "OSMRE") hereby settle and compromise upon the terms and conditions stated in this Settlement Agreement, all of WildEarth Guardians' claims in the above-captioned Freedom of Information Act ("FOIA") case.

I. Background

1. WildEarth Guardians sent a FOIA request to OSMRE on November 30, 2017 (the "FOIA Request").
2. WildEarth Guardians filed this case on April 11, 2019. ECF No. 1. OSMRE filed its Answer on May 22, 2019. ECF No. 11. On July 8, 2019, Magistrate Judge Varholak entered the parties' Proposed Scheduling Order, including the requirement that OSMRE would produce all records responsive to the FOIA Request by December 13, 2019. ECF No. 14. The parties subsequently agreed to extend OSMRE's summary judgment briefing deadline two times in

order to determine whether the remaining issues in the lawsuit could be settled and to facilitate settlement negotiations. ECF Nos. 15, 18. The Court issued two orders approving these extensions. ECF Nos. 17, 20.

3. The parties now wish to settle this matter without further litigation and agree to the following tasks, terms, and conditions.

II. Tasks

4. *Attorneys' Fees and Costs.* OSMRE agrees to pay to WildEarth Guardians the sum of \$24,000.00 to resolve WildEarth Guardians' claim for statutory costs and attorneys' fees incurred in this lawsuit. All other fees and costs incurred in this litigation shall be borne by the parties.

5. *Fund Transfer.* Payment will be accomplished by electronic transfer to Energy & Conservation Law's Colorado Lawyer Trust Account Foundation ("COLTAF") account. Within two business days of signing of this Settlement Agreement, WildEarth Guardians agrees to provide the necessary account and routing information and OSMRE agrees that such information shall be held confidential to the extent permitted by law, and used only for purposes of accomplishing this transfer of funds. Payment of the above sum shall be accomplished within twenty working days of OSMRE's receipt of the above account and routing information. In order to comply with the Court's April 13, 2020 order (ECF No. 24), and to simplify the terms of the settlement agreement, OSMRE shall act diligently to ensure the funds transfer is accomplished no later than May 25, 2020. Should circumstances prevent OSMRE from accomplishing the transfer by May 25, 2020, the parties shall confer and reform the terms in paragraphs 5-13 of this agreement to ensure enforceability and address the circumstances that prevented the transfer.

6. *Court Filings.* No later than June 1, 2020, counsel for WildEarth Guardians will file a motion to dismiss this lawsuit with prejudice.

III. *Miscellaneous*

7. This Settlement Agreement shall not constitute an admission of liability or fault on the part of OSMRE or any of their employees, agents, or representatives.

8. Each party represents that it has read this Settlement Agreement, that it understands all of its terms, that it has had a reasonable amount of time to consider whether to sign, that it has had an opportunity to discuss the terms of this Settlement Agreement with its attorney and has done so, and that it signed this Settlement Agreement of its own free will and with knowledge of the meaning and effect of each of its provisions. Each party further represents and warrants that it has made its own independent investigation and determination with respect to the settlement of the dispute and it is not relying on any statement or information provided by any other party or their counsel in entering into this Settlement Agreement, other than the express terms of this Settlement Agreement.

9. Each party to this Settlement Agreement represents and warrants that it has fully authorized the individual signing this Settlement Agreement on behalf of the party to do so.

10. Neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by a writing signed by the party against whom the change, waiver, discharge, or termination is sought. This Settlement Agreement may be amended only by a written amendment signed by the parties.

11. The parties agree that this Settlement Agreement shall constitute the whole agreement. The parties also agree that this Settlement Agreement may be executed in

counterparts, and may be executed either by hand or electronically in any manner that is mutually acceptable to the parties.

12. Each party acknowledges and agrees that this Settlement Agreement supersedes all prior and contemporaneous written, oral, or implied in fact agreements among the parties, relating to the settlement of the civil action.

13. The parties agree that this Settlement Agreement will not be used as evidence or otherwise in any pending or future civil or administrative action against OSMRE or the United States, or any agency or instrumentality of the United States, except that this Settlement Agreement may be used as evidence to enforce this Settlement Agreement. The parties further agree that the terms and conditions of this Settlement Agreement will have no bearing or effect on OSMRE's obligations with respect to any other FOIA requests from Plaintiff or any other party.

14. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

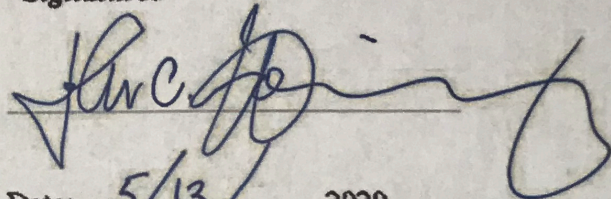
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IV. *Signatures*

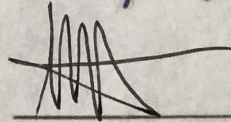
Harry E. Eide

Date: 5/5/ 2020

Date: _____ 2020



Date: 5/13/ 2020



Date: 5/13/ 2020